

# Builder Bulletin 28H

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Tarion Security Requirements  
for Condominiums Type C&D  
(High Rise Condominiums and  
certain Low and Mid Rise Condominiums)

## What this Guideline is All About

This guideline applies to condominium defined as types C&D:

- **Type C Condominium-** A project that has both Part 9 and Part 3 [OBC](#) requirements. Construction usually includes underground parking, which incorporates the Part 3 OBC requirement. This type of condominium is subject to [Bulletin 19 Reporting](#).
- **Type D Condominium-** A project that has only Part 3 [OBC](#) requirements. This type of condominium is characteristic of high-rise condominiums with 4 or more storeys and with underground parking and amenities. This type of condominium is subject to [Bulletin 19 Reporting](#).

This guideline describes how Tarion determines the amount of security required in respect of Type C & D condominium construction. There will be situations where our security assessment may differ from these guidelines.

## Initial Security Requirements:

In general, the amount of initial security required is \$20,000 per unit. This may be varied if there are factors present which merit a security adjustment (see examples of case by case security adjustments at p.5).

### Forms of Security Accepted:

The forms of security accepted include:

1. Bond or Letter of Credit in a form acceptable to Tarion
2. A Deposit Trust Agreement with an escrow agent acceptable to Tarion

Cash security may be acceptable on a case by case basis. Where cash security is posted Tarion may require additional security instruments to be registered securing Tarion's interest in the cash security at the cost of the registrant.

The characteristics and rules of Deposit Trust Agreements ("DTAs") are described separately in appendix **[#]**. Note that restrictions on the use of DTAs may apply on a case by case basis.

### Collateral Security:

In certain cases, we may accept or require collateral security such as a mortgage of real property. Collateral security options can be discussed on an individual basis. If collateral security is accepted, you will have to assume the administrative costs in setting the security up.

## When Security is required:

Acceptable security must be in place at least 5 business days prior to sales and marketing of the project or the commencement of construction, whichever occurs first.

Where a DTA is used, the DTA must be in place 5 business days before the taking of deposits and/or the signing of agreements of purchase and sale, or the commencement of construction, whichever occurs first.

Failure to meet these time requirements could result in additional terms and conditions of registration, higher fees for use of DTA instruments or restrictions on the ability to use DTAs or other types of security in the future.

## Release of Security:

In general, the terms for releasing security will be based on the following:

1. Your experience, measured in terms of the number of C&D type projects you have completed and in respect of which two years has elapsed from condo registration. (Note, in terms of assessing your experience for projects which were in the nature of a joint venture with one or more other partners, we will assess those on a case by case basis);
2. The nature and extent of defects (if any) identified in the BB19 Final report and the subsequent Performance Audit;
3. Specific factors relating to your customer service track record, the nature and complexity of the project, and your financial position (including the equity and financial position of both the registrant and the indemnitor/guarantor(s)).

## Security Release Categories:

The release of security will be governed by the following categories, with more favorable release terms corresponding to increased experience.

No Projects Completed	1-2 Projects Completed	3-5 Projects Completed	6-15 Projects Completed	15+ Projects Completed
Category 5	Category 4	Category 3	Category 2	Category 1

Projects in this assessment refer to C&D type condominium projects. In general we track the number of projects based on the number Common Element numbers registered with Tarion. So for a phased condominium, each phase with its own CE number will be considered a separate project. A project is considered completed for the purpose of this assessment 1 year after condominium registration. Registrants which are within an umbrella group with a common ownership structure will be assessed based on the total number of projects completed within the umbrella group.

New applicants that are unrelated to any other registration or umbrella group will be considered to have no projects completed. The registrar maintains a discretion to review, on a case by case basis, situations where the principals of a new applicant have material past experience with a registrant that has completed projects. In those cases the Registrar may adjust the applicable security category.

In general, experience with projects other than C&D type condominium projects will not be counted; however on a case by case basis the Registrar may exercise a discretion to adjust the applicable security category where the nature of the past experience is particularly relevant to the proposed construction.

### **Category 1: Release Terms (for Very Experienced Vendors):**

- The first trigger for release is acceptance by Tarion of the Final BB19 Report in accordance with the BB19 timelines. Within 45 days of receipt of the BB19 Final Report, security will be reduced to either an amount estimated by Tarion based on the defects reported in the BB19 report plus a 15% contingency or 15% of the applicable common element warranty limit, whichever is greater (i.e. a minimum of \$375,000 will be retained where the CE limit is 2.5 million). Note that if for some reason the costs to repair defects identified in the BB19 report are not able to be reasonably assessed within 45 days, security will be held until such time as the additional investigations required to develop a reasonable estimate are completed.
- The second trigger for release is the receipt by Tarion of the 1 year Performance Audit (PA). Within 45 days of receipt of the PA Tarion will release up to 100% of the remaining security based on the costs of defects as outlined in the PA and as assessed by Tarion, plus any unit warranty claims that are outstanding.
- The third trigger for release of any remaining amounts will be based on Tarion's ongoing claims assessment of outstanding deficiencies in keeping with the processes outlined in Builder Bulletin 49. Tarion may authorize the release of remaining security where it deems the risk of non-recovery to be low, and may authorize a release in the absence of a formal sign-off from the condominium board in respect of deficiencies where it considers it appropriate to do so.

### **Category 2 Release Terms (for Experienced Vendors):**

- The first trigger for release is acceptance by Tarion of the Final BB19 Report in accordance with the BB19 timelines. Within 45 days of receipt of the Final BB19 report security will be reduced to the greater of the amount estimated by Tarion based on the defects reported in the BB19 report plus a 25% contingency; or 25% of the applicable common element warranty limit (i.e. \$625,000 where the CE limit is 2.5 million). Note that if for some reason the cost to repair defects identified in the BB19 report are not able to be reasonably assessed within 45 days, security will be held until such time as the additional investigations required to develop a reasonable estimate are completed.
- The second Trigger for release is the receipt of the 1 year PA. Within 45 days of receipt of the PA Tarion will release up to 75% of the remaining security based on the costs of defects as

outlined in the PA and as assessed by Tarion, plus any unit warranty claims that are outstanding.

- The third trigger for release of any remaining amounts will be at the end of the 2d year from registration and review of any additional 2d Year Performance audits or unit claims submitted in connection with the Project. Based on Tarion's ongoing claims assessment of outstanding deficiencies and in keeping with the processes outlined in Builder Bulletin 49, Tarion may authorize the release of remaining security where it deems the risk of non-recovery to be low, and may authorize a release in the absence of a formal sign-off from the condo board in respect of deficiencies where appropriate.

### Category 3 Release Terms (For medium experienced Vendors):

- The first trigger for release is the acceptance by Tarion of the Final BB19 report in accordance with BB19 timelines. Within 45 days of acceptance of the Final BB19 report security will be reduced to the greater of the amount estimated by Tarion based on the defects reported in the BB19 report plus a 30% contingency; or 30% of the applicable common element warranty limit (i.e. \$750,000 where the CE limit is 2.5 million). Note that if for some reason the cost to repair defects identified in the BB19 report are not able to be reasonably assessed within 45 days, security will be held until such time as the additional investigations required to develop a reasonable estimate are completed.
- The second trigger for release is the receipt of the 1 year PA. Within 45 days of receipt of the PA Tarion will release up to 50% of the remaining security based on the costs of defects as outlined in the PA and as assessed by Tarion, plus any unit warranty claims that are outstanding.
- The third trigger for release of any remaining amounts will be at the end of the 2d year from registration and a review of any additional 2d Year Performance audits or unit claims submitted in connection with the Project. Security will be released based on Tarion's ongoing claims assessment of outstanding deficiencies and in keeping with the processes outlined in Builder Bulletin 49.

### Category 4

- The first trigger for release is the receipt of the 1 year PA. Within 45 days of receipt of the PA Tarion will release up to 50% of the security based on the costs of defects as outlined in the PA and as assessed by Tarion plus any unit warranty claims that are outstanding (note it is possible that security requirements may be increased if the PA notes defects in an amount in excess of security held).
- The second trigger for release of any remaining amounts will be at the end of the 2d year from registration. In the event there are no 2d year claims filed, the release will be based on a review of the status of any items identified in the PA. In the event 2d year claims, either common element claims or unit claims have been filed, security may be held until such time as Tarion is satisfied that those issues are resolved bearing in mind the repair and conciliation request timeframes from BB49.

## Category 5 Release Terms (For new vendors):

- Security will be eligible to be released after two years have elapsed from the date of condominium registration. Security will then be released based on a review of the Final BB19 Report, Performance Audit Report(s) any unit claims and the status of the project including any unclosed units. In the event 2d year claims, either common element claims or unit claims have been filed, security may be held until such time as Tarion is satisfied that those issues are resolved bearing in mind the repair and conciliation request timeframes from BB49.

The security review timelines set out above are service commitments which Tarion will use its best efforts to comply with. There may be cases from time to time, based on resource issues or the complexity of the file, where those service commitments cannot be met.

## Case by Case Security Adjustments

The approach outlined above is a guideline. We expect it to apply in most cases, but sometimes there will be unique factors which change the assessment. When that happens we will adjust security terms to more accurately reflect your risk profile. Your security terms, both in terms of the amount of security required and the release terms may be adjusted at any time based on new information.

Examples of factors which could lead to a securities adjustment include:

1. Your customer service track record, including
  - a. Chargeable conciliations, claims paid, and records of delays
2. Your financial situation, including
  - a. Changes to your lender, or lending terms
  - b. Deterioration in your financials, credit rating and/or unusual lien activity
3. Your management/business structure, including
  - a. Changes to your principals, or key management team
  - b. Changes in business product type
  - c. Rapid expansion of your business
4. The nature/status of the project, including:
  - a. Whether the project is a conversion
  - b. The use of new technology
  - c. The use of common elements with complex or unusual design
  - d. The use of common elements of high value relative to the number of units.
  - e. The number of unclosed units remaining not earmarked for rental pool.

## Blanket Umbrella Level Security

In general the security which is provided is specific to the registration and can apply to all projects or units within that registration. For developers who have ongoing and multiple registrations within a single “umbrella”, Tarion may, at its sole discretion, allow for the security to be posted at the umbrella level as an alternative to registration specific security. In this arrangement a global bond will be posted which may be drawn down upon in respect of any warranty defaults within the umbrella. The use of this kind of consolidated security arrangement may result in administrative and security level savings.

## Appeals

If you do not agree with the security assessment you may request a management review. If after that review occurs you remain unsatisfied, the security terms will be issued in a form that will allow for an appeal to the independent License Appeal Tribunal.